
****FEDERAL EXEMPTION BILL****
DRAFT

RELATING TO CONTROLLED SUBSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the authority to decide the medical use of controlled substances is reserved to the State. The Supreme Court of the United States confirmed this authority when it found in *Gonzales v. Oregon*, 546 U.S. 243 (2006), that "[t]he Attorney General has rulemaking power to fulfill his duties under the [Controlled Substance Act]. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law."

The legislature also finds that the State of Hawaii lawfully exercised its authority when it enacted Act 228, Session Laws of Hawaii 2000, and created a state-regulated medical use of cannabis program. The United States Department of Justice and the Drug Enforcement Administration have never challenged the constitutionality of Hawaii's Medical Use of Cannabis Program. The legislature further finds that it never

intended to create a positive conflict with federal law, as defined in title 21 United States Code section 903. The Drug Enforcement Administration has the authority to recognize exemptions for the special use of controlled substances as evidenced by the federal schedule I exemption recognizing the nondrug use of peyote by the Native American Church according to title 21 Code of Federal Regulations section 1307.31. A federal scheduling exemption for Hawaii's Medical Cannabis Program will recognize that Hawaii's Medical Use of Cannabis Act does not create a positive conflict with federal law and does not violate or authorize the violation of federal law.

The purpose of this Act is to require the department of health to request a special use exemption from the Drug Enforcement Administration recognizing that the listing of marijuana as a federal Schedule I controlled substance does not apply to Hawaii's Medical Cannabis Program.

SECTION 2. Section 329D-25, Hawaii Revised Statutes, is amended to read as follows:

"§329D-25 Coordination among state and federal agencies.

The department shall initiate ongoing dialogue among relevant state and federal agencies to identify processes and policies that ensure the privacy of qualifying patients and qualifying

out-of-state patients and the compliance of qualifying patients, primary caregivers, qualifying out-of-state patients, and caregivers of qualifying out-of-state patients and medical cannabis dispensaries with state laws and regulations related to medical cannabis. The department shall submit a written request, in accordance with title 21 C.F.R. section 1307.03, to the Office of Diversion Control, Drug Enforcement Administration by September 1, 2020, stating that Hawaii Revised Statutes at part IX, Chapter 329, and Hawaii Revised Statutes at Chapter 329D, do not create any positive conflict with state and federal drug laws and are consistent with title 21 U.S.C. section 903, and requesting formal written acknowledgement that the listing of marijuana as a controlled substance in federal Schedule I does not apply to the non-prescription use of cannabis under Hawaii's Medical Cannabis Registry and Medical Cannabis Dispensary Programs."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____